

ORIGINAL

FILED
DISTRICT COURT OF GUAM

AUG - 9 2005 ~~X~~

MARY L.M. MORAN
CLERK OF COURT

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10
11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF GUAM**

13 UNITED STATES OF AMERICA,
14
15 Plaintiff,

16 vs.

17 REX S. ALADO a/k/a "REX",
18 Defendant.

CRIMINAL CASE NO. 98-00310

**AMENDED
PLEA AGREEMENT**

19 Pursuant to Rule 11(c)(1)(C), the United States and the defendant, REX S. ALADO a/k/a
20 "REX", enter into the following plea agreement:

21 1. The defendant agrees to enter a guilty plea to Count III of an indictment charging him
22 with conspiracy to possess crystal methamphetamine "ice" with intent to distribute in violation
23 of 21 U.S.C. § § 841(a)(1) and 846. The government will move to dismiss Counts I and III upon
24 sentencing.

25 2. The defendant, REX S. ALADO a/k/a "REX", further agrees to fully and truthfully
26 cooperate with federal law enforcement agents concerning their investigation of the
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1 importation, possession, and distribution of controlled substances, and related unlawful activities,
2 including the disposition of profits from and assets relating to such activities. He agrees to
3 testify fully and truthfully before any grand juries and at any trials or proceedings against any
4 other co-conspirators if called upon to do so for the United States, subject to prosecution for
5 perjury for not testifying truthfully. The United States will make this cooperation known to the
6 Court prior to the defendant's sentencing. The defendant further understands that he remains
7 liable and subject to prosecution for any non-violent Federal or Territorial offenses that he does
8 not fully advise the United States, or for any material omissions in this regard. In return for this
9 cooperation, the United States agrees not to prosecute defendant in the District of Guam or the
10 Northern Mariana Islands for any other non-violent offenses which he reveals to federal
11 authorities.

12 3. The defendant, REX S. ALADO a/k/a "REX", understands and agrees that any and all
13 assets or portions thereof acquired or obtained by him as a direct or indirect result of illegal
14 trafficking in drugs or used to facilitate such illegal activity shall be surrendered to the United
15 States or any lawful agency as may be directed by the Court. The assets to be surrendered
16 include, but are not limited to, cash, stocks, bonds, certificates of deposit, personal property and
17 real property.

18 4. The defendant, REX S. ALADO a/k/a "REX", further agrees to submit to a polygraph
19 examination by any qualified Federal polygraph examiner if called upon to do so by the
20 government. The defendant understands that such polygraph examinations may include, but will
21 not be limited to, his knowledge of or involvement in unlawful drug and related activities, and
22 his knowledge of others' involvement in such activities, and the identification of any and all
23 assets and conveyances acquired in whole or in part by the defendant or others through such
24 unlawful activities or the use of such assets or conveyances to further such unlawful activities.
25 Defendant understands that the government will rely on the polygraph in assessing whether he
26 has been fully truthful.

1 5. The defendant, REX S. ALADO a/k/a "REX", understands that the maximum
2 sentence for conspiracy to possess crystal methamphetamine a/k/a "ice" in excess of 100 grams
3 with intent to distribute is incarceration for life, a \$4,000,000 fine, and a minimum mandatory
4 term of ten (10) years of incarceration which may not be stayed or suspended by the court. Any
5 sentence imposed shall include a term of supervised release of at least five (5) years in addition
6 to such terms of imprisonment, as well as a \$100.00 special assessment fee. Defendant also
7 understands a sentence of supervised release could be revoked during the term of such supervised
8 release, thereby resulting in additional incarceration of defendant for up to five (5) years. The
9 \$100 special assessment fee must be paid immediately upon sentencing. The government will
10 recommend a fine within the Sentencing Guidelines range. If defendant is financially unable to
11 immediately pay the fine in full, defendant agrees to make a full disclosure of his financial status
12 to the United States Attorney's Office by completing a Financial Disclosure Form (OBD-500) for
13 purpose of fixing a monthly payment schedule. Defendant understands that, by law, interest
14 accrues on any remaining balance of the debt.

15 6. If defendant provides full, truthful, and substantial assistance to investigating federal
16 agencies, the government will move the Court, as provided by Section 5K1.1, United States
17 Sentencing Guidelines, hereinafter USSG, and 18 U.S.C. Section 3553(e), for a downward
18 departure from the Guidelines and the statutory minimum sentence. Defendant understands the
19 following:

20 (a) At or before the time of sentencing, the United States will advise the Court of
21 any assistance provided by defendant in the prosecution of another person who
22 has committed a criminal offense. The United States may, but shall not be
23 required to, make a motion requesting the Court to depart from the sentencing
range called for by the guidelines in the event defendant provides "substantial
assistance." This decision shall be in the sole discretion of the United States
Attorney.

24 (b) It is understood and agreed that a motion for departure shall not be made, under any
25 circumstances, unless defendant's cooperation is deemed "substantial" by the United
26 States Attorney. The United States has made no promise, implied or otherwise, that
27 defendant will be granted a "departure" for "substantial assistance." Further, no promise
28 has been made that a motion will be made for departure even if defendant complies with
the terms of this agreement in all respects, but has been unable to provide "substantial
assistance."

1 (c) The United States agrees to consider the totality of the circumstances,
2 including but not limited to the following factors, in determining whether, in the
3 assessment of the U.S. Attorney, defendant has provided "substantial assistance"
4 which would merit a government request for a downward departure from the
5 applicable guideline sentencing range:

6 (1) the United States' evaluation of the significance and usefulness
7 of any assistance rendered by defendant;

8 (2) the truthfulness, completeness, and reliability of any
9 information or testimony provided by defendant;

10 (3) the nature and extent of defendant's assistance;

11 (4) any injuries suffered or any danger or risk of injury to
12 defendant or defendant's family resulting from any assistance
13 provided by defendant; and,

14 (5) the timeliness of any assistance provided by defendant.

15 (d) It is understood that even if a motion for departure is made by the United
16 States, based upon defendant's perceived "substantial assistance," the final
17 decision as to how much, if any, reduction in sentence is warranted because of
18 that assistance, rests solely with the District Court.

19 The government acknowledges that the defendant to date has already provided substantial
20 assistance that would merit the filing of a downward departure motion as provided by Section
21 5K1.1 of the Guidelines and 18 U.S.C. Section 3553(e).

22 7. The defendant understands that to establish a violation of conspiracy to possess crystal
23 methamphetamine a/k/a "ice" with intent to distribute, the government must prove each of the
24 following elements beyond a reasonable doubt:

25 First: there was an agreement between the defendant and at least
26 one other person to possess with intent to distribute over 100 grams of
27 crystal methamphetamine a/k/a "ice," and

28 Second, the defendant became a member of the conspiracy knowing of its object
to possess with intent to distribute "ice," and intending to accomplish it.

8. The defendant understands that the United States Probation Office will calculate a
"sentencing range" within the U.S. Sentencing Guidelines. The defendant understands the
Sentencing Guidelines are advisory, but will be used by the District Court in fashioning the
sentence. The defendant also understands that the facts he stipulates to herein will be used by
probation, pursuant to 1B1.2 of the Sentencing Guidelines, in calculating the advisory guidelines
level:

1 a. The defendant was born on 1971 and is a citizen of the Republic of the Philippines.

2 b. If the defendant cooperates with the United States by providing information
3 concerning the unlawful activities of others, the government agrees that any self-incriminating
4 information so provided will not be used against defendant in assessing his punishment, and
5 therefore, pursuant to § 1B1.8 of the sentencing guidelines, such information should not be used
6 in determining the applicable guidelines range.

7 c. Beginning in 1998, and continuing until November 11, 1998, the defendant, Alwin
8 Cayas, Marcelo Penas, and others met, discussed and agreed to possess with intent to distribute
9 and distribute crystal methamphetamine a/k/a "ice," a Schedule II controlled substance, from
10 California to Guam. Defendant and Penas discussed and agreed that Cayas would travel from
11 Los Angeles to Guam for the purpose of bringing crystal methamphetamine to Guam and
12 distributing it to others for profit. The defendant made the reservations for the flight. On
13 November 10, 1998, both Cayas and Penas were passengers aboard a Continental Airlines flight
14 which arrived at the Guam International Airport from Honolulu, Hawaii. Cayas was referred to
15 Guam Customs officers for secondary inspection, and it was discovered that he was carrying a
16 hard shell case with diving equipment including two aluminum reserve tanks, and concealed in
17 the bottoms of both tanks were packages of crystal methamphetamine a/k/a "ice." The total gross
18 weight, including packaging, of the drugs was 1801.5 grams. A forensic chemist analyzed the
19 controlled substance and determined that it was d-methamphetamine hydrochloride a/k/a ice.
20 The total net weight was 1,736 grams and was 97% pure.

21 9. Pursuant to Fed.R.Crim.P. 11(c)(1)(C), the government and defendant agree and
22 stipulate that the appropriate sentence shall be a period of incarceration not to exceed time served
23 at the time of sentencing, and a period of five (5) years of supervised release. The government
24 will move for a downward departure motion on account of the substantial assistance the
25 defendant has provided to date pursuant to Section 5K1.1 of the Guidelines and 18 U.S.C.
26 Section 3553(e). The parties will request immediate sentencing to the extent practicable taking
27 into account the schedule of the U.S. Probation Office.

1 Defendant understands the Court is not bound to accept this disposition of the case and
2 may reject the agreement either at the time defendant enters his plea or after receiving and
3 considering a presentence report. If the Court accepts this agreement, the Court shall inform
4 defendant that it will embody in the judgment and sentence the disposition provided for in this
5 agreement. If the Court rejects this agreement, the Court shall, on the record, inform the parties
6 of this fact, advise defendant personally in open court or, on a showing of good cause, in camera,
7 that the Court is not bound by this plea agreement, afford defendant the opportunity to then
8 withdraw his plea, and advise defendant that if defendant persists in his guilty plea, the
9 disposition of the case may be less favorable to defendant than that contemplated by this plea
10 agreement and impose upon defendant any sentence up to and including the maximum sentence
11 of life imprisonment, and a term of supervised release greater than five (5) years.

12 10. The defendant understands that this plea agreement depends on the fullness and
13 truthfulness of his cooperation. Therefore, defendant understands and agrees that if he should
14 fail to fulfill completely each and every one of his obligations under this plea agreement, or make
15 material omissions or intentional misstatements or engage in criminal conduct after the entry of
16 his plea agreement and before sentencing, the government will be free from its obligations under
17 the plea agreement. Thus, defendant, in addition to standing guilty of the matters to which he has
18 pled pursuant to this agreement, shall also be fully subject to criminal prosecution for other
19 crimes, and for the counts which were to be dismissed. In any such prosecution, the prosecuting
20 authorities, whether Federal, State, or Local, shall be free to use against him, without limitation,
21 any and all information, in whatever form, that he has provided pursuant to this plea agreement
22 or otherwise; defendant shall not assert any claim under the United States Constitution, any
23 statute, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules
24 of Evidence, or any other provision of law, to attempt to bar such use of the information.

25 11. In exchange for the government's concessions in this plea agreement, the defendant
26 waives any right to appeal or to collaterally attack this conviction but reserves the right to appeal
27 the sentence imposed in this case. The defendant understands and agrees that the government
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1 has bargained for a criminal conviction arising from his criminal conduct. If at any time
2 defendant's guilty plea or conviction is rejected, withdrawn, vacated, or reversed, for whatever
3 reason or is rendered invalid for any reason, or if any change of law renders the conduct for
4 which he was convicted to be non-criminal, defendant agrees that he will enter a guilty plea to
5 another charge encompassing the same or similar conduct. In such event, defendant waives any
6 objections, motions, or defenses based upon the Statute of Limitations, Speedy Trial Act, or
7 constitutional restrictions as to the time of the bringing of such charges.

8 12. The defendant acknowledges that he has been advised of his rights as set forth below
9 prior to entering into this plea agreement. Specifically, defendant has been fully advised of, has
10 had sufficient opportunity to reflect upon, and understands the following:

11 a. The nature and elements of the charge and the mandatory minimum penalty
12 provided by law, if any, and the maximum possible penalty provided by law;

13 b. His right to be represented by an attorney;

14 c. His right to plead not guilty and the right to be tried by a jury and at that trial, the
15 right to be represented by counsel, the right to confront and cross-examine witnesses against him,
16 and the right not to be compelled to incriminate himself, that is, the right not to testify;

17 d. That if he pleads guilty, there will not be a further trial of any kind on the charges to
18 which such plea is entered so that by entering into this plea agreement, he waives, that is, gives
19 up, the right to a trial;

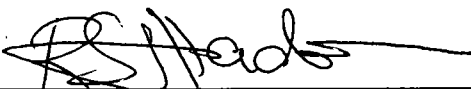
20 e. That, upon entry of a plea of guilty, or thereafter, the Court may ask him questions
21 about the offenses to which he has pled, under oath, and that if he answers these questions
22 under oath, on the record, his answers may later be used against him in prosecution for perjury or
23 false statement if an answer is untrue;

24 f. That he agrees that the plea agreement is voluntary and not a result of any force,
25 threats or promises apart from this plea agreement;

26 g. That he has read the plea agreement and understands it.
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1 h. The defendant is satisfied with the representation of his lawyer and feels that his
2 lawyer has done everything possible for his defense.
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5 DATED: 8-9-05



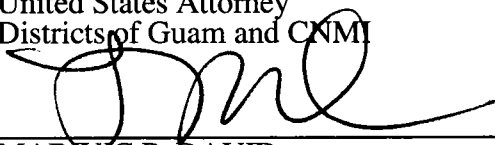
REX A. ALADO a/k/a "REX"
Defendant

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8 DATED: 8-9-05




SAMUEL S. TEKER
Attorney for Defendant

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13 DATED: 8/9/05

LEONARDO M. RAPADAS
United States Attorney
Districts of Guam and CNMI
By: 

MARVIC P. DAVID
Assistant U.S. Attorney

14
15
16
17 DATED: 8-9-05



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First Assistant U.S. Attorney